

REMARKS

1. **Status Of The Claims.** Claims 1-14 and 27 are pending in the subject application. Claims 1-14 and 27 are rejected under 35 U.S.C.A. Section 103 (a) as being obvious over United States Patent No. 6,604435 to Buchanan ("Buchanan") and further in view of United States Patent No. 6,230982 to Newton ("Newton").

Claims 23 and 26 have without prejudice been canceled. Claim 1 has been amended without the addition of any new matter. Claims 2, 4-12, 14, and 27 are as previously presented. Claims 3 and 13 are as originally presented. Claims 15-22 and 24-25 have been withdrawn. Applicant respectfully reserves the right to pursue any non-elected claims, canceled or otherwise unclaimed subject matter in one or more continuation, continuation-in-part, or divisional applications.

2. **Telephonic Interview.** Applicant thanks the Examiners for the courtesy of the telephonic interview conducted on September 7, 2010 in which claim 1 as previously amended was discussed in view of the combination of the Buchanan and Blankenstein references. Figure 1 of Blankenstein was in particular discussed and Examiner Menon asked Applicant's representative if panel B of Figure 1 taught axial adjustment of the outer capillary. Applicant's attorney believed that the outer capillary was stationary as indicated in panel A of Figure 1. Applicant's attorney agreed to review the Blankenstein reference to address Examiner Menon's question. The Examiner's suggested capturing in the claim that the axial adjustment is occurring to counter the configurational differences between capillaries or changes within capillaries during use to obtain better resolution. The Examiners indicated that they would decide how to proceed upon Applicant's attorney's response.

3. **The Rejections Under 35 U.S.C.A. Section 103(a) As Being Obvious Over Buchanan In View of Blankenstein Are Overcome.**

The Examiner has rejected claims 1-14 and 27 under Section 103(a) as being obvious over United States Patent No. 6,604,435 to Buchanan ("Buchanan") in view of the article entitled Coaxial Flow Mixer For Real-Time Monitoring Of Cellular Responses In Flow Injection Technology of Blankenstein ("Blankenstein").

Applicant in view of the above described telephonic interview provides the following remarks which address Examiner Menon's concern that Figure 1, panel B of the Blankenstein reference teaches "adjustably varying axial location of said injection point of said sperm cells". Applicant's specification teaches and it is also well understood by those of ordinary skill in the art that the term "injection point" means the point at which particles egress from the end of the injector tube into the fluid stream contained within the nozzle of a flow cytometer. Blankenstein changes the original injector tube in a flow cytometer by introduction of the fused silica capillary which is referred to in Blankenstein as the "outer capillary". *Blankenstein at Page 201, bottom of column 2*. The claimed "injection point" corresponds in Blankenstein to the point at which particles egress from the outer capillary (and not the point at which the particles egress from the "inner capillary tube") into the fluid stream contained within the nozzle (the nozzle corresponds to the bars shown in tapered relation in Figure 1, panel B of Blankenstein and not the "outer capillary"). As indicated in Figure 1, panel A of Blankenstein the outer capillary is stationary ("stationary outer capillary"). In Figure 1, panel B, the outer capillary can only faintly be seen due to the poor quality reproduction of the reference. However, under close scrutiny, the end of the outer capillary can be viewed and understood to remain stationary as indicated in Figure 1, panel A. The inner capillary is positionable within the stationary outer capillary as indicated in panel A ("positional inner capillary") but positioning of the inner capillary does not change the location of the end of the outer capillary (and therefore does not change the "injection point" as defined and claimed) in relation to the orifice of the nozzle (the nozzle depicted in panel B as two bars in tapered relation). Therefore, the Blankenstein does not teach that the location of the injection point can be axially adjusted as claimed by Applicant. Accordingly, the combination of Buchanan and Blankenstein does not teach element element g. of claim 1 and therefore claim 1 and the claims made ultimately dependent upon claim 1 are not obvious in view of the combination.

Amendment of Claim 1. Applicant has amended claim 1 to make clear that the injection point entrains particles into the fluid stream contained by the nozzle. A person of ordinary skill in the art would not be confused that the nozzle of a flow cytometer would correspond to the outer capillary described by Blankenstein and therefore the claim limitation is clear.

Applicant believes that the clarifying amendment to claim 1 places claim 1 and all the claims made ultimately dependent upon claim 1 in condition for allowance. Applicant respectfully requests allowance of claim 1 as amended and claims 2-14 and 27.

4. Request For Telephonic Interview. Applicant respectfully requests a telephonic interview to address any remaining concerns of the Examiner.

CONCLUSION

Claims 23 and 26 have without prejudice been canceled. Claims 15-22 and 24-25 have been withdrawn. Claim 1 has been amended without the addition of any new matter. Claims 2, 4-12, 14 and 27 are as previously presented. Claims 3 and 13 are as originally presented. Applicant believes that each of claims 1-14 and 27 are now in condition for allowance and respectfully requests allowance of same.

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Respectfully Submitted,

By:



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